

AMENDED IN ASSEMBLY AUGUST 5, 2013

AMENDED IN SENATE APRIL 8, 2013

SENATE BILL

No. 168

Introduced by Senator Monning

February 4, 2013

An act to add Section 1698.9 to the Labor Code, relating to farm labor contractors.

LEGISLATIVE COUNSEL'S DIGEST

SB 168, as amended, Monning. Farm labor contractors: successors: wages and penalties.

Existing law requires farm labor contractors to be licensed by the Labor Commissioner and to comply with specified employment laws applicable to farm labor contractors. Under existing law, a person who violates farm labor contractor requirements is guilty of a misdemeanor punishable by specified fines, or imprisonment in the county jail for not more than 6 months, or both.

This bill, in addition, would make a farm labor contractor successor to any predecessor farm labor contractor that owed wages or penalties to a former employee of the predecessor, whether the predecessor was a licensee or not, liable for those wages and penalties, if the successor farm labor contractor meets one or more specified criteria. By imposing a new requirement on farm labor contractor successors, the violation of which would be a crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1698.9 is added to the Labor Code, to
2 read:

3 1698.9. A farm labor contractor successor to any predecessor
4 farm labor contractor that owed wages or penalties to a former
5 employee of the predecessor, whether the predecessor was a
6 licensee under this chapter or not, is liable for those wages and
7 penalties, if the successor farm labor contractor meets one or more
8 of the following criteria:

9 (a) Uses substantially the same facilities or workforce to offer
10 substantially the same services as the predecessor farm labor
11 contractor. *A farm labor contractor that has operated with a valid*
12 *license for at least the preceding three years shall have an*
13 *affirmative defense to liability under this subdivision for using*
14 *substantially the same workforce, if all of the following apply:*

15 (1) *The individuals in the workforce were not referred or*
16 *supplied for employment by the predecessor farm labor contractor*
17 *to the licensed farm labor contractor asserting this defense.*

18 (2) *The licensed farm labor contractor asserting the defense*
19 *has not had any interest in, or connection with, the operation,*
20 *ownership, management, or control of the business of the*
21 *predecessor farm labor contractor within the preceding three*
22 *years.*

23 (3) *The licensed farm labor contractor asserting the defense*
24 *has not been determined to have violated any provision of the*
25 *Labor Code within the preceding three years.*

26 (b) Shares in the ownership, management, control of the
27 workforce, or interrelations of business operations with the
28 predecessor farm labor contractor.

29 (c) Employs in a managerial capacity any person who directly
30 or indirectly controlled the wages, hours, or working conditions
31 of the employees owed wages or penalties by the predecessor farm
32 labor contractor.

1 (d) Is an immediate family member of any owner, partner,
2 officer, licensee, or director of the predecessor farm labor
3 contractor or of any person who had a financial interest in the
4 predecessor farm labor contractor. As used in this section,
5 “immediate family member” means a spouse, parent, sibling, child,
6 uncle, aunt, niece, nephew, or grandparent.

7 SEC. 2. No reimbursement is required by this act pursuant to
8 Section 6 of Article XIII B of the California Constitution because
9 the only costs that may be incurred by a local agency or school
10 district will be incurred because this act creates a new crime or
11 infraction, eliminates a crime or infraction, or changes the penalty
12 for a crime or infraction, within the meaning of Section 17556 of
13 the Government Code, or changes the definition of a crime within
14 the meaning of Section 6 of Article XIII B of the California
15 Constitution.